

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

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| UNITED STATES OF AMERICA | § | |
| | § | |
| v. | § | CRIMINAL ACTION NO. 4:13CR-191 |
| | § | |
| ABEL RIOS | § | |

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Now before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on March 12, 2018, to determine whether Defendant violated his supervised release. Defendant was represented by Robert Arrambide. The Government was represented by Heather Rattan.

Abel Rios was sentenced on July 16, 2014, before The Honorable Marcia A. Crone of the Eastern District of Texas after pleading guilty to the offense of Felon in Possession of a Firearm, a Class C felony. This offense carried a statutory maximum imprisonment term of 10 years. The guideline imprisonment range, based on a total offense level of 17 and a criminal history category of V, was 46 to 57 months. Abel Rios was subsequently sentenced to 37 months imprisonment followed by 3 years supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure, drug aftercare, and a \$100 special assessment. On March 23, 2017, Abel Rios completed his period of imprisonment and began service of the supervision term.

On February 6, 2018, the U.S. Probation Officer executed a First Amended Petition for Warrant or Summons for Offender Under Supervision [Dkt.41 Sealed]. The Petition asserted that Defendant violated four (4) conditions of supervision, as follows: (1) Defendant shall refrain from

any unlawful use of a controlled substance; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (3) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as the Defendant is released from the program by the probation officer. Defendant shall pay any cost associated with treatment and testing; and (4) Defendant shall not commit another federal, state, or local crime.

The Petition alleges that Defendant committed the following acts: (1) On April 5, 2017, Mr. Rios submitted a urine sample, which tested positive for cocaine. The sample was forwarded to Alere Laboratory where said result was confirmed; (2) On May 26, 2017, Mr. Rios submitted a urine sample which tested positive for opiates. The sample was forwarded to Alere Laboratory where it was confirmed to be positive for hydromorphone, a prescription opiate. Mr. Rios stated that he took an old prescribed pain medication, but he has failed to provide a prescription to the U.S. Probation Office as directed. On May 31, Mr. Rios submitted a urine sample, which tested positive for methamphetamine. The sample was forwarded to Alere Laboratory where said sample was confirmed. Mr. Rios subsequently admitted to using methamphetamine and signed an admission form stating such. On June 14, 2017, Mr. Rios submitted a urine sample, which tested positive for marijuana. The sample was forwarded to Alere Laboratory where said result was confirmed; (3) Mr. Rios failed to submit urine samples as directed on June 19 and June 21, 2017; and (4) On December 22, 2017, Mr. Rios was arrested by the McKinney, Texas, Police Department for Theft Prop >=\$100<\$750. The case is pending, and Mr. Rios is being held in the Collin County Jail.

Prior to the Government putting on its case, Defendant entered a plea of true to all four (4) of the allegations of the Petition. Having considered the Petition and the plea of true to all four (4) allegation of the Petition, the Court finds that Defendant did violate his conditions of supervised release.

Defendant waived his right to allocate before the District Judge and his right to object to the report and recommendation of this Court.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant's supervised release be revoked and that he be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eighteen (18) months of imprisonment with a term of supervised release of eighteen (18) months to follow.

The Court also recommends that Defendant be housed in the Bureau of Prisons in Seagoville, Texas, if appropriate.

SIGNED this 13th day of March, 2018.



Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE